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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of
Policies and Rules
concerning Toll Fraud

)
) CC Docket No. 93-292
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ORIGINAL

COMMENTS

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Summary

Comprehensive measures like those suggested by the Commission in the NPRM are obviously necessary in order to curb the increasing occurrence of toll fraud. BellSouth concurs with the establishment of the Federal Advisory Committee which would foster closer coordination among various interests in addressing toll fraud issues. BellSouth would also support Federal Legislation having specific application to toll fraud. Such legislation should provide for substantial fines or mandatory prison sentences for violators.

BellSouth provides and will continue to provide information and advice to PBX users and other customers on methods to avoid toll fraud. BellSouth concurs with the TFPC paper which outlines duties and responsibilities of PBX owners and other entities on installing and operating PBX systems. BellSouth believes that the TFPC paper will aid the Commission in setting up a system of shared liability.

BellSouth currently offers blocking and screening services. Other fraud prevention measures are under consideration. In addition, since the introduction of LIDB, BellSouth has implemented procedures and processes that will minimize the opportunity for fraud. These efforts have produced a dramatic decline in billing adjustments attributable to calling card fraud. However, to maximize performance of these anti-fraud features, IXCs must be

required to provide both the calling and called number on each LIDB query. If an IXC fails to provide this information and such failure contributes to the occurrence of fraud, then BellSouth should be relieved of liability.

Since the majority of cellular toll traffic now bypasses LEC facilities, BellSouth is limited in its ability to detect and prevent cellular toll fraud. BellSouth believes however that the Commission's initiatives to control toll fraud for wireline services could be applied to cellular services.

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COMMENTS

1. En Banc Hearing Issues

¹ In the Matter of Policies and Rules concerning Toll Fraud, CC Docket No. 93-292, FCC 93-496, Notice of Proposed Rulemaking, released December 2, 1993 (hereinafter "NPRM").

manufacturers/vendors and law enforcement representatives. The NPRM now seeks comment on ways to foster closer coordination among these various interests and specifically on the merits of creating a new Federal Advisory Committee. Additionally, the Commission is considering proposals to join law enforcement in requesting Federal legislation to address toll fraud issues. Parties are also asked to comment on appropriate education initiatives which will inform consumers of toll fraud risks and remedial measures.²

BellSouth concurs in the establishment of a Federal Advisory Committee which would be charged with formulating specific solutions to the issues of toll fraud deterrence, detection and prosecution. All segments of the industry and law enforcement should be represented on the Committee. Further, BellSouth recommends that the Toll Fraud Prevention Committee (TFPC) of the Alliance for Telecommunications Industry Solutions or a subset of this group comprise a portion of the membership of the Federal Advisory Committee. The TFPC possesses specialized knowledge of toll fraud issues and experience in formulating cooperative industry solutions. These resources should be made available to the Federal taskforce.

BellSouth would also support Federal legislation having specific application to telephone toll fraud. The legislation should provide for substantial fines and/or mandatory prison terms where aggravated circumstances are

² NPRM at ¶ 13.

present (e.g., high monetary loss, multiplicity of fraudulent acts, recidivism of the offender). Absent such provisions, whatever legislation is enacted will have little deterrent effect nor (given the taxed resources of the police and the courts) can vigorous prosecution be anticipated.

BellSouth has made substantial efforts to inform customers of toll fraud risk and the availability of effective countermeasures. In the preceding two years, BellSouth representatives have made presentations to large user groups in Florida, Georgia and Kentucky and to trade associations like the APCC. BellSouth has also participated in two Communications Fraud Control Conferences; has provided assistance to numerous public and private organizations (e.g., universities, hospitals, private corporations); and has conducted workshops for payphone providers. Any or all such initiatives could benefit from Commission involvement or provide a format for joint industry/law enforcement efforts. Further, the CPE subsidiary of BellSouth Telecommunications, Inc. has communicated directly with its customer base regarding the risks of toll fraud and has recommended certain precautionary measures for the consideration of customers. It has also incorporated toll fraud warning provisions in sales materials.

2. PBX Fraud

The NPRM tentatively concludes that carriers have an

obligation to warn PBX customers of the risks attendant upon the latter's use of carrier services and that tariff liability provisions which lack such a warning are unreasonable. The Commission also requests comment on whether and how it should apportion the cost of CPE-based fraud and what measure of damages it should employ to compensate aggrieved parties. Lastly, comment is solicited on the efficacy and availability of monitoring services and on the propriety of requiring LECs and IXCs to provide these offerings.³

BellSouth and the CPE subsidiary of BellSouth Telecommunications, Inc. are prepared to offer information and advice to PBX users and other customer classes which will aid in the avoidance of toll fraud. This may be accomplished through the use of bill inserts, meetings with consumer groups, training seminars and other means. To the extent the Commission is proposing that LECs offer this type of consumer information, BellSouth would have no objection to the requirement. Toll fraud methods are constantly changing, as hackers develop new entry avenues and techniques for compromising CPE systems. Thus, any tariff provisions which incorporate a duty to warn of potential toll fraud risks must necessarily be of a general nature.

Liability for charges occasioned by toll fraud must be determined on a case-by-case basis. In such a proceeding one appropriate inquiry is whether the various parties

³ NPRM at ¶¶ 24-26.

involved have taken reasonable steps to protect the telecommunications system against fraudulent use. The TFPC has published a paper which outlines the responsibilities of PBX owners and other entities involved in installing and operating a PBX system and in providing common carrier services to that system. BellSouth generally concurs with the delineation of duties contained in the paper, which is attached hereto as Exhibit 1. These recommendations can assist the Commission in developing standards by which to judge the reasonableness of litigants' conduct where liability for fraudulent calls is at issue.⁴ Moreover, they would be useful for inaugurating a system of shared liability as discussed in the NPRM.⁵

While it seems probable that some carriers will elect to offer monitoring services as a means of gaining competitive advantage, provisioning of these services should

⁴ The Commission also seeks comment on the appropriate forum for resolving questions related to liability for charges occasioned by fraudulent toll usage. NPRM at ¶ 25. Although a party cannot be compelled to forego its statutory right to file a formal complaint under Section 208, arbitration (where acceptable) is particularly well suited for such fact-intensive inquiries. The costs of arbitration should be assessed to the party whose acts or omissions facilitated commission of the toll fraud.

⁵ "We note that potential shared liability would require definition of the specific responsibilities of the CPE-owner to secure the equipment or communications system, of the manufacturer to warn of toll fraud risks associated with features of the CPE, and of the carrier to offer detection and prevention programs and educational services." NPRM at ¶ 25.

not be made compulsory.⁶ The better approach is to permit each carrier to determine the benefits of monitoring services to its own customer base. For example, these services may be very useful in detecting international fraud but of little value if fraudulent domestic calls account for the majority of unauthorized PBX usage.

3. Payphone Fraud

BellSouth supports application of a credit to remove fraudulent charges from independent payphone provider (IPP) accounts, where it is determined that the IPP has taken reasonable steps to protect the payphone from fraud. In such a case, BellSouth will verify that the IPP has subscribed to appropriate blocking and screening services. BellSouth further notes that where such services are in place, billing edits can remove fraudulent charges in advance of billing to the IPP. If the IPP has failed to obtain blocking and screening services, charges occasioned by toll fraud will be billed to the payphone provider and full payment will be expected.

Where a fraudulent call results from a BellSouth error, BellSouth will accept responsibility for IXC costs associated with the call. Under this proposal, the IXC will be entitled to reimbursement of any charges billed by the

⁶ Indeed, the Commission's authority to compel a service offering of this nature is not without question.

LEC, plus any provable IXC costs incidental to the call.⁷ BellSouth submits that such costs can be expressed as a factor which will be developed annually through negotiations between BellSouth and individual IXCs. BellSouth should not be held liable for all lost revenues in the event of a LEC service failure. In particular, BellSouth is vigorously opposed to any imposition of liability for consequential damages (e.g., lost profits) and urges the Commission to reject any proposal of this nature.⁸

If BellSouth's investigation reveals that the fraud was not occasioned by a BellSouth error or caused by an IPP's failure to protect service, then the charges at issue will be recoured in full to the IXC concerned for resolution.

The Commission has also requested comment on the general availability and usage levels of blocking and screening services.⁹ International call blocking (ICB) is now available through BellSouth Tariff F.C.C. No. 1. ICB, originating line number screening (OLNS) and billed number screening (BNS) may be obtained under the applicable independent payphone provider (IPP) tariffs of all nine states in the BellSouth region. In Florida--BellSouth's

⁷ These charges would include amounts billed and collected for switched access and billing and collection services.

⁸ If BellSouth is exposed to liability for consequential damages resulting from fraud, clearly this added risk must be assessed, quantified and reflected in service rates.

⁹ NPRM at ¶ 31.

most populous state--payphone providers are required to subscribe to BNS, OLNS and ICB,¹⁰ and elsewhere in the region subscription levels are generally high.

Nevertheless, exceptions are present: of 63,432 payphone lines, 1,567 subscribe to neither OLNS nor ICB; an additional 1,622 do not subscribe to ICB; and 106 do not subscribe to BNS.

Other fraud prevention measures are being implemented or are under consideration. In locating the network interface, BellSouth follows practices intended to minimize the possibility of physical tampering. Thus, the interface may be placed at a height inaccessible to pedestrian traffic, or within a secure housing or within a building where other support equipment is located. Where payphones are located in the common areas of a shopping mall, the network interface will generally be placed in the telephone equipment room of the mall.

High toll indicator service also affords some protection against payphone fraud. With this service toll usage is monitored and a notification triggered when a line exceeds its specified usage level (default level is \$250). The usage level can be customized to meet specific needs. A daily report is generated for all lines reaching the specified level, and affected payphone providers are notified by telephone. High toll indicator service is

¹⁰ The Florida PSC retains power to waive this requirement upon petition.

available throughout the BellSouth region.¹¹

Secondary dial tone reorigination may be produced in CPE coin telephone equipment which is not manufactured according to digital switch specifications. A software feature has been developed for use with some switch types and has been deployed by BellSouth in appropriate central offices. Within limits, this feature is useful in addressing the problem of secondary dial tone reorigination.¹²

BellSouth is also participating in a plan which aims to reduce the incidence of international toll fraud. The plan, as recommended by the TFPC, creates a telephone number line range restriction on all public, semi-public and IPP service classes. All new requests for such service must receive a number assignment in the 8000 or 9000 series, subject to number availability. This assignment method has proven highly effective in assisting international operators to identify public access lines and thus in decreasing the

¹¹ The effectiveness of this service is contingent upon the existence of a billing and collection agreement between the LEC and IXC and the interval between placement of a call and its posting to the account.

¹² Depending on switch type, the software feature may be ineffective in the following situations:

- (1) If the payphone receives a call and the calling party hangs up;
- (2) If the end user terminates a call to a line with Call Forward Don't Answer, the line is served by a DMS switch and the call forwarded number is busy.

Other limitations may be identified as further experience is gained with the software.

incidence of fraudulent collect and third number billing. Implementation of the plan produced a 54% reduction in international toll fraud in 1993, as compared with 1992.

4. Cellular Fraud

As the Commission has tentatively determined for wireline services, liability for fraudulent cellular traffic should reside with the party whose acts or omissions facilitated commission of the fraud. Thus, liability should be imposed on customers who decline to employ reasonable security measures and/or whose affirmative acts lead to fraudulent calls over the cellular system (e.g., one of PINs of simple derivation; unauthorized modification of access equipment, A-Key, or feature restrictions; failure to report stolen cellular equipment). LECs should remove (or refund as appropriate) all charges assessed for fraudulent calls when an error in LEC-provided OLNS or BNS services enables commission of the fraud. Finally, a cellular carrier must absorb fraud losses occasioned by its knowing continuation of service to a customer employing a modified unit, its failure to adopt reasonable security measures for the cellular network¹³ and/or its refusal to obtain available blocking and screening services.

Cellular fraud should be addressed through Federal legislation, and criminal acts presenting aggravated

¹³ Among those security measures which should be available to the cellular carrier is the right to deny authorization for the issuance of calling cards bearing a cellular number.

circumstances should be punishable by substantial fine or prison term. Further, the Commission should prohibit tampering with or altering a cellular telephone's Electronic Serial Number (ESN) in any manner, including the assignment of an ESN to a second cellular telephone. Finally, the cellular industry should have representation on a newly-formed Federal Advisory Committee, among whose charges would be the enhancement of cooperative efforts between cellular carriers, other segments of the telecommunications industry and the law enforcement community.

5. Line Information Database (LIDB) Fraud

Since the introduction of LIDB Access Service in 1992, BellSouth has sought continuously to improve its administration of the database and thereby minimize opportunities for fraud. BellSouth regionalized these efforts by establishing a fraud control center, which became operational on January 1, 1992. Located in Columbia, South Carolina, the center is open 24 hours per day, 7 days per week. In May 1992, BellSouth introduced a fully automated system to prioritize and distribute calling card fraud alerts to its investigators. BellSouth has invited all IXCs to tour the fraud control center, has provided information respecting its fraud alert procedures and has elicited IXC suggestions for operational improvement. Numerous modifications have been made in response to IXC feedback. In the fall of 1992, BellSouth purchased a Bellcore-developed anti-fraud system enhancement, which was

implemented in September 1993. The new system permits more sophisticated monitoring of calling card queries and moreover offers monitoring for billed-to-third and collect calls. BellSouth has funded additional enhancements to the anti-fraud system, which will be available in the third quarter of 1994. One of these improvements will enable BellSouth to accept fraud alerts from IXC customers by electronic mail in lieu of the facsimile technology in current use. BellSouth will continue to assess customer needs and to refine its fraud control system. These efforts have already produced a dramatic decline in billing adjustments attributable to calling card fraud.

To maximize performance of these anti-fraud features, it is essential that IXCs provide both the calling and called number on each LIDB query. This requirement was included in BellSouth's original tariff for LIDB Access Service; however, to date only one IXC provides such information. IXCs should not be permitted to impose a charge for calling and called number data, since the information is used for their benefit to minimize fraud exposure. Further, receipt of this data will enable BellSouth to introduce other fraud prevention measures, e.g., 5# restricted cards and "domestic only" calling cards which place specified limits on permitted usage.

BellSouth maintains that if an IXC fails to provide calling and called number information and such failure contributes to the occurrence of fraud, BellSouth should be

relieved of liability for all resulting losses. Conversely, BellSouth recognizes its own responsibility to provide a validation service which is essentially error free. Thus, IXC's are entitled to reimbursement for lost costs where an error in the LIDB or a LEC failure to observe existing procedures permits commission of a fraud. These IXC costs would include amounts billed and collected for LIDB access, switched access and billing and collection services. BellSouth submits that these costs can be expressed as a factor, which would be developed on an annual basis through negotiations of BellSouth and individual IXC's subscribing to LIDB Access Service.

Under no circumstances should BellSouth be responsible for all toll fraud losses associated with LIDB (e.g., unauthorized use of a valid calling card). Fraud is necessarily a cost of doing business for all service providers. It comprises a part of total IXC operational costs and is included in surcharge rates IXC's apply to alternate billed calls. Thus, BellSouth's liability should be limited to instances where an absence of reasonable care in the operation of the database prevented detection and avoidance of the fraud, and should not exceed the amount of provable IXC costs incidental to the fraudulent call.

CONCLUSION

Toll fraud is a costly and perennial problem of the telecommunications industry. With increasing complexity of the network and the emergence of many new service providers,

there is considerable risk that difficulties now encountered will be exacerbated. Thus, the instant rulemaking is both timely and much needed, offering as it does the opportunity to develop effective and enduring responses to the challenges this problem presents.

Respectfully submitted,

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